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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 56/232 of 24 December 2001, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

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Summary

In this report the Special Rapporteur reports on the activities undertaken and the correspondence received since the beginning of 2002. He makes particular mention of the second meeting of experts on mercenaries, organized by the Office of the United Nations High Commissioner for Human Rights, which took place in Geneva from 13 to 17 May 2002. He then reviews the situation of the African continent with regard to mercenary activities. He draws attention to positive developments, such as the ceasefire agreement signed in Angola, on 5 April 2002, between the Chief of Staff of the Angolan Armed Forces and the Chief of Staff of UNITA, and the presidential and legislative elections held in Sierra Leone on 14 May 2002.

Matters that he continues to view with concern include the continuation of the war in the Democratic Republic of the Congo and the massacres reported in Kisangani in May 2002; the recent armed confrontations in Brazzaville, Republic of the Congo; reports from the Government of Equatorial Guinea concerning recruitment of mercenaries; and the recent recruitment of mercenaries for operations in Madagascar.

The body of the report focuses on the Special Rapporteur's visits on official mission to El Salvador and Panama. The Special Rapporteur thanks the Governments of those countries for their full cooperation and their transparency, which contributed to the success of the visits. He reports that he was able to talk with the executive and judicial authorities of those countries concerning the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; the definition of mercenary; and the connection between mercenary activities and terrorism. He also describes the private interviews he had with four persons who are being held in Panama on charges of trying to assassinate, in their country, the Head of State of Cuba, in November 2000, and who are believed to be connected with the recruitment of mercenaries to place explosives in tourist facilities in Havana in 1997.

Finally, regarding the International Convention of 1989, the report refers to the recent deposit of the instruments of adhesion of Costa Rica, Mali and Belgium, which brings to 24 the number of States parties to that international instrument; the latter entered into force on 20 October 2001.

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

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I. Introduction

1. During its fifty-sixth session, the General Assembly adopted resolution 56/232 of 24 December 2001 by which it reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations.

2. The Assembly decided to consider at its fifty-seventh session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It requested the Special Rapporteur to report, with specific recommendations, to the General Assembly at that session his findings on the use of mercenaries to undermine the right of peoples to self-determination. It also requested him to continue taking into account in the discharge of his mandate the fact that mercenary activities continue to occur in many parts of the world and are taking on new forms, manifestations and modalities. It also requested him to propose a clearer definition of mercenaries, including clear nationality criteria, based on his findings, the proposals of States and the outcomes of the meetings of experts, and to make suggestions on the procedure to be followed for international adoption of a new definition.

3. It urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right of peoples to self-determination, to destabilize or overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination. It also called upon States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur and to bring to trial those found responsible or to consider their extradition, if so requested, in accordance with domestic law and applicable bilateral or international treaties.

4. It welcomed the recent entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (resolution 44/34, annex) and called upon all States that have not yet done so to consider taking the necessary action to sign or ratify it, as a matter of priority. It welcomed further the adoption by some States of national legislation restricting the recruitment, assembly, financing, training and transit of mercenaries and it welcomed the cooperation extended by those countries that had received visits from the Special Rapporteur.

5. The Assembly requested the United Nations High Commissioner for Human Rights to convene, before the fifty-ninth session of the Commission on Human Rights, a second meeting of experts, pursuant to Assembly resolution 54/151 of 17 December 1999, to continue studying and updating the international legislation and to make recommendations for a clearer legal definition of mercenaries that would make more efficient the prevention and punishment of mercenary activities. It also requested the Office of the High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of the activities of mercenaries on the right of peoples to self-determination and, when requested and where necessary, to render advisory services to States affected by the activities of mercenaries.

6. In this regard, the Special Rapporteur wishes to report that the second meeting of experts was held in Geneva from 13 to 17 May 2002 (see sect. III below). The first meeting of experts was held from 29 January to 2 February 2001, also in Geneva. The report of the High Commissioner for Human Rights on the outcome of that event will be submitted to the Commission at its fifty-ninth session.

7. The Special Rapporteur wishes to point out that the Office of the High Commissioner has already prepared an information leaflet on the adverse effects of the activities of mercenaries on the right to self-determination and that it has been published as part of the Human Rights Fact Sheets series (Fact Sheet No. 28).

8. On 12 April 2002, at its fifty-eighth session, the Commission on Human Rights adopted resolution 2002/5 whereby it, inter alia, reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations; recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market; called

upon all States to consider taking the necessary action to sign or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and invited them to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur.

9. The Commission welcomed the entry into force of the International Convention and the efforts being made by the Office of the High Commissioner in the preparation of the second meeting of experts on traditional and new forms of mercenary activities. It requested the Special Rapporteur to consult States and intergovernmental and non-governmental organizations in the implementation of the resolution and to report, with specific recommendations, to the Commission at its fifty-ninth session his findings on the use of mercenaries to undermine the right of peoples to self-determination.

10. It should be pointed out that the Commission requested the Special Rapporteur to continue taking into account in the discharge of his mandate the fact that mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities. It requested the High Commission to provide the Special Rapporteur with all the necessary assistance and support for the fulfilment of his mandate, including through the promotion of cooperation between Special Rapporteur and other components of the United Nations system that deal with countering mercenary-related activities, and requested the Office of the High Commissioner, when requested and where necessary, to render advisory services to States affected by the activities of mercenaries.

11. Accordingly, and pursuant to resolution 56/232, the Special Rapporteur has the honour to submit this report to the General Assembly for consideration at its fifty-seventh session.

II. Activities of the Special Rapporteur

A. Implementation of the programme of activities

12. The Special Rapporteur made three trips to Geneva: from 25 to 29 March 2002, to attend the fifty-eighth session of the Commission on Human Rights; from 13 to 17 May 2002 to attend the second meeting of experts on the question of mercenaries; and from 24 to 28 June 2002 to chair the ninth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the Commission on Human Rights. While in Geneva the Special Rapporteur held consultations with representatives of various States and met with members of non-governmental organizations. He also held coordination meetings with the thematic mechanisms section of the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

13. At the invitation of the Government, he visited El Salvador, on official mission from 5 to 8 May 2002. He also visited Panama on official mission from 8 to 10 May 2002, at the invitation of that country. An account of these visits may be found in section V of this report.

B. Correspondence

14. Pursuant to resolutions 56/232 of the General Assembly and 2002/5 of the Commission on Human Rights, the Special Rapporteur sent a communication on 2 May 2002 to all States Members of the Organization, requesting: (a) information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries); (b) information on participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, the exercise of the right to self-determination by other peoples and the enjoyment of human rights; (c) information on the possible existence of mercenary activities in the territory of another country against the State in question; (d) information on the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, formation of and support for death squads and paramilitary organizations, trafficking in and kidnapping of persons, drug trafficking, arms trafficking and smuggling; (e) information on existing domestic legislation and on treaties outlawing mercenary activities to which the State is party; (f) suggestions for enhancing the international treatment of the topic, including suggestions for a clearer definition of mercenaries; (g) information and views on private security service and military advice and training companies, and on the connection between mercenarism and terrorism.

15. In a note verbale dated 22 May 2002, the Permanent Mission of Kuwait to the United Nations Office at Geneva stated the following:

> "The State of Kuwait continues to maintain its firm and unwavering position of condemning the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, this being a flagrant violation of the norms governing relations among States and peoples, of the principles of human rights and of the noble values inherent in human conscience.
>
> "The State of Kuwait, as a member of the international community, has based its policies on the principle of respect for the independence of States and their territorial integrity, and therefore condemns the use, training and financing of mercenaries. In view of this firm and unwavering position it does not, and will not, allow such activities to take place in its territory, nor does it support any activity undertaken by mercenaries in any other State.
>
> "With respect to legislative measures taken by Kuwait to ensure that its territory cannot be used for the recruitment, financing or training of mercenaries, we would like to point out that Kuwait has never witnessed this phenomenon, nor has it seen such activities in its history. No special legislation on mercenaries has therefore been enacted, but the State of Kuwait acceded to the four Geneva Conventions of 1949 on victims of armed conflict, pursuant to the Emir's decree of 12 August 1967, and also acceded to the two Additional Protocols to the said Conventions following the Emir's decree issued on 3 December 1984. All of these instruments have acquired legal force under Kuwait's national legislation. Additional Protocol I, as you are aware, contains a provision on the non-entitlement of mercenaries to the status of combatants or prisoners of war, and on the legal consequences thereof."

16. In a letter dated 30 May 2002, the military adviser of the Permanent Mission of Malawi to the United Nations, Colonel John D. Msonthi, Jr., informed the Special Rapporteur as follows:

> "Please be advised that the Malawi Human Rights Commission has no information regarding mercenaries in Malawi. The Commission is not aware, or has not come across any information indicating that Malawi has mercenaries within its borders, nor is it aware of any domestic legislation regarding mercenaries.
>
> "We regret that we could not be of any assistance to you in carrying out the mandate conferred on you in preparing the reports for submission to the General Assembly and the Commission on Human Rights."

17. In a letter dated 10 June 2002, the Permanent Representative of Guatemala to the United Nations Office at Geneva, Ambassador Antonio Arenales Forno, transmitted the report prepared by the Ministry of Defence of Guatemala, which states as follows:

> "There is nothing to suggest that members of the Guatemalan Army have engaged in any mercenary activities.
>
> "As regards the Guatemalan Army, there is no information nor is there any sign of actions such as those mentioned in (b), (c) or (d).
>
> "Article 149 of the Constitution of the Republic of Guatemala, states that 'Guatemala will regulate its relations with other States in accordance with international principles, rules and practices, with a view to contributing to the maintenance of peace and liberty, respect for and protection of human rights, and the strengthening of democratic processes and international institutions that safeguard the mutual and equitable interest of States.
>
> "Article 46 (Pre-eminence of international law) establishes the general principle that, in respect of human rights, treaties and agreements approved and ratified by Guatemala shall take precedence over domestic laws.
>
> "Article 244 (Integration, organization and goals of the Armed Forces) establishes that the Armed Forces of Guatemala are an institution whose purpose is to maintain the independence, sovereignty and honour of Guatemala, its territorial integrity, peace and internal and external security.
>
> "They are a single, indivisible, essentially professional, apolitical, obedient and non-deliberative institution made up of army, air force and navy.

"Article 245 (Prohibition of illegal armed groups) states that organizing and operating armed groups not regulated by the laws and regulations of the Republic is a punishable offence.

"Article 247 (Qualifications needed to become an officer) establishes that only persons who are Guatemalan by birth and who have never adopted another nationality may be made officers in the Armed Forces.

"The Armed Forces of Guatemala are aware of the great importance of banning the use of mercenaries in armed conflicts and fully support the human rights instruments whereby the United Nations condemns the use of mercenaries, and they call for continued efforts to establish consensus on international and national regulations to help fill the legal vacuum that currently facilitates the use of mercenaries and encourages their proliferation.

"Guatemala is not aware of any such company that offers its services to Governments to intervene in internal armed conflicts with the help of professional soldiers for the purpose of improving the military efficiency of Government forces.

"Terrorism is considered also to be a criminal activity involving mercenaries who, in return for payment, ignore the most elementary considerations of respect for human life, and for a country's legal system and security."

18. In a note verbale dated 21 June 2002, the Permanent Mission of the Republic of Moldova to the United Nations Office at Geneva reported that that country has no information concerning any participation by citizens of that country in mercenary activities.

19. In a letter dated 23 May 2002, Ms. Cheryl J. Sim, political adviser at the Permanent Mission of the United States of America to the United Nations Office at Geneva, informed the Special Rapporteur that her Government was again inviting him to visit the United States and proposed that the visit be scheduled for the end of January 2003. The Special Rapporteur again expressed his gratitude for the invitation and said that he hoped to be able to visit the United States at the suggested time. Such a visit would enable him to speak with Government authorities and representatives of the academic and non-governmental communities concerning the connection between mercenaries and terrorism; and between mercenary activities and trafficking in persons, arms and drugs; and concerning the use of mercenaries by organizations of exiles seeking to overthrow the Governments of their own countries.

III. The second meeting of experts

20. In compliance with binding resolutions 56/232 of the General Assembly of 24 December 2001 and 2002/5 of the Commission on Human Rights of 12 April 2002, the Office of the United Nations High Commissioner for Human Rights organized the second meeting of experts on the subject of mercenaries which met to consider the various forms of present-day mercenary activity and to make a contribution towards the formulation of an updated legal definition of the concept of mercenary.

21. The meeting was held from 13 to 17 May 2002 in Geneva with the participation of nine invited experts representing the various geographical regions and legal systems, and the Special Rapporteur. The meeting was attended by the experts Chaloka Beyani (Zambia), Eric David (Belgium), Vojin Dimitrijevic (Yugoslavia), Silvia Fernández de Gurmendi (Argentina), Françoise Hampson (United Kingdom of Great Britain and Northern Ireland), Olga Miranda Bravo (Cuba), Arpad Prandler (Hungary), I. A. Rehman (Pakistan) and Martin Schönteich (South Africa). The meeting was chaired by Silvia Fernández de Gurmendi and Chaloka Beyani acted as rapporteur.

22. The analysis covered matters relating to recent events connected with mercenary activities; the mandate of the Special Rapporteur; the criminalization or penalization of mercenary activities; the definition of mercenary; the responsibility of States for mercenary activities; the relations between mercenary activities and terrorism; and the regulation of private companies offering military assistance and consultancy services. A detailed analysis was made of the legislation of Belgium and South Africa as well as of article 47 of Additional Protocol I to the Geneva Conventions of 1949 and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The report of the second meeting of experts will be submitted by the United Nations High Commissioner for Human Rights to the Commission on Human Rights at its fifty-ninth session.

23. As at the first meeting, particular emphasis was placed on the analysis of the definition of mercenary

bearing in mind also aspects relating to the legal framework of the question and the difficulties of taking into consideration the various forms taken by mercenary activities. There was no consensus on proposing an alternative definition but elements were suggested which the Special Rapporteur will analyse in concluding his study of the matter.

IV. Mercenary activities in Africa

24. Fifteen years after the creation of the function of Special Rapporteur on the use of mercenaries as a means of violating human rights and hindering the exercise of peoples to self-determination, peace is still an unknown situation for many peoples of Africa. In many places on the continent armed conflicts, including conflicts of regional scope, cause the death of hundreds or thousands of Africans. Many of these conflicts include a mercenary component, either by virtue of contracts for recruitment, training or participation in direct action in combat, or through the different forms of illicit trafficking that flourish in areas affected by armed conflicts.

25. Although there have been some positive signs such as the recent ceasefire agreement in Angola or the holding of presidential and legislative elections in Sierra Leone, the processes of social and political breakdown accompanied by armed tension have continued. Serious situations are still impeding the precarious emergence of nation States, including deep crises of governmental stability and tenacious struggles for control of oil fields and mineral deposits and other valuable natural resources. Wars are waged for the control of diamond deposits.

26. The exercise by African peoples of the right to self-determination is beset by a whole series of armed conflicts involving mercenaries. The sovereignty of the peoples concerned over their natural resources and their rational exploitation is also impaired.

27. The first reports of the Special Rapporteur referred to armed conflicts that called in question the exercise of the right to self-determination by African peoples. Now those conflicts seem to involve another problem: that of natural resources such as oil, uranium, magnesium, bauxite and particularly diamonds and other precious stones. Greed for them is the actual cause of the destabilization of legitimate Governments, the arming and financing of rebel groups and the instigation of internal conflicts. Those who exercise control from Europe over the markets for precious stones, particularly diamonds, are not unconnected with such conflicts.

28. A South African citizen Johan Niemoller, who was leader of the extreme right-wing Party Die Volk and had links with the sinister Civil Cooperation Bureau, the death squad of the apartheid era, was sentenced by the court of Krugersdorp to two years imprisonment and a fine of 100,000 rand for his participation in illegal trafficking in diamonds purchased from members of UNITA and sold on the Antwerp market for 1.1 million rand. It was also proved that Niemoller had provided UNITA with arms and had been involved in the recruitment of mercenaries in Europe on behalf of that organization. Concerning the background of Niemoller, mention may be made of his participation in planning the assassination of Anton Lubowski, the leader of the South-West Africa People's Organization.

29. Forty-two years after the Democratic Republic of the Congo gained its independence, the civil war which besets the country and in which other African States are involved is costing the country 80 per cent of its resources. Serious massacres were denounced in March 2002 in the east and north-east of the country. Troops from Angola, Namibia and Zimbabwe have been supporting the Government of President Joseph Kabila, while forces from Rwanda and Uganda have supported the rebels, chiefly the Movement for the Liberation of the Congo and the Congolese Rally for Democracy. The ceasefire agreed to in 1999 has been broken repeatedly. On the frontier with Uganda, ethnic clashes between Lendu and Hema groups continue, the latter being supported by Ugandan forces. The presence of mercenaries in the Democratic Republic of the Congo is not new: it dates back, as is well known, to the very time of its independence which attempts were made to prevent by using mercenaries.

30. In the north-east of Rwanda, 150 Hutu rebels were recently killed in clashes with the Rwandese Patriotic Army. On 21 March 2002 in Equatorial Guinea, the Minister of the Interior, Clemente Engonga Nguema, and the Minister and Spokesman for the Government, Antonio Fernando Nué Ngu, accused the former speaker of Parliament and leader of the party Republican Democratic Force, Felipe Ondo Obiang Alogo, together with other political leaders, of trying to recruit mercenaries in order to destabilize the country.

31. The Special Rapporteur must draw attention to one particularly encouraging fact for peace in the continent, namely the signing of the ceasefire agreement in Angola on 5 April 2002 between General Armando da Cruz Neto, Chief of Staff of the Angolan Armed Forces, and the Chief of Staff of UNITA, Abreu Muengo. That agreement will revive the processes of peace, reconstruction and democratization in Angola which began with the Lusaka Protocol of 1994. It provides for the holding of elections within two years, the reintegration of 50,000 members of UNITA, and an emergency plan for internally displaced persons. The long 27-year civil war in Angola leaves in its wake a million dead, 50,000 orphans, 100,000 persons mutilated by anti-personnel mines and a third of the population, in other words 4 million people, displaced.

32. Another positive event was the holding of presidential and legislative elections in Sierra Leone which took place on 14 May 2002, marking the end of a bloody 10-year civil war which left hundreds of thousands of dead, wounded and mutilated.

33. The Special Rapporteur has continued to study the nature of the conflicts which have affected and continue to affect Africa and to propose a global policy for a defence of life, personal integrity, freedom and the security of persons and respect for the sovereignty of African States. He notes with concern the recent accusations that have been made concerning the recruitment and hiring of mercenaries for work in Madagascar, a country that is going through a serious political crisis which the Special Rapporteur hopes it will be able to overcome thanks to the good offices of the United Nations and of the Organization of African Unity. He also notes with concern the recent armed clashes in Brazzaville, Republic of the Congo, between governmental and rebel forces which have caused dozens of deaths. Lastly, he cannot omit to draw attention to the situation in the Comoros, a country that has, throughout its history, suffered a number of attacks by gangs of mercenaries.

V. Visits to El Salvador and Panama

A. Reports on the visits

34. The Special Rapporteur wishes, in the first place, to convey his appreciation to the Governments of El Salvador and Panama for inviting him to visit their countries in compliance with his mandate and for their collaboration and the openness they displayed.

35. The official mission of the Special Rapporteur to those countries enabled him to continue his investigations concerning the use of countries in Central America for the recruitment and training of mercenaries for subsequent participation in illegal and criminal acts, particularly against Cuba, its political leadership, its population and its facilities.

36. The Special Rapporteur received information to the effect that Salvadorian territory had been used for the planning of attacks and for the recruitment and training of some of the direct participants in such attacks. Luis Clemente Faustino Posada Carriles, alias Ignacio Medina, alias Franco Rodríguez Mena recruited Otto René Rodríguez Llerena, a Salvadorian citizen who was a perpetrator of one of the attacks committed in Havana City and who had been arrested in Cuba.

37. The visit of the Special Rapporteur to El Salvador from 5 to 8 May 2002 enabled him to have interviews with the Minister for Foreign Affairs of that country, Dr. María Eugenia Brizuela de Ávila, with the Minister of the Interior, with the President of the Supreme Court of Justice, with the Attorney-General of the Republic, with the Counsel for Human Rights, with the Deputy Minister of National Defence, with the Deputy Minister of Public Security, with the Director-General of the National Civilian Police and with representatives of the State Intelligence Agency. The Special Rapporteur also had occasion to meet and discuss humanitarian questions with the family members of Raúl Ernesto Cruz León and Otto René Rodríguez Llerena, whom he had interviewed in prison during his visit to Cuba in September 1999.

38. The visits to El Salvador and Panama enabled the Special Rapporteur to exchange differing points of view with the executive and judicial authorities of those two countries, particularly in relation to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, the definition of mercenary and the relationships between terrorism and mercenary activities.

39. The Special Rapporteur also received information on the acquisition by Luis Posada Carriles of a false Salvadorian passport which enabled him to travel to Panama on 3 November 2000, allegedly for the purpose of making an attempt on the life of Fidel Castro,

President of the Council of State and of the Council of Ministers of Cuba, at the Tenth Ibero-American Summit of Heads of State and Government, held on 17 and 18 November 2000.

40. As will be recalled, Posada Carriles was accused of being the perpetrator of the explosion in flight over Barbados of a passenger aircraft of Cubana de Aviación in 1976 in which 73 people were killed. Posada Carriles was an agent of the Central Intelligence Agency (CIA) of the United States of America and worked with the anti-Castro opposition until he was recruited by the Venezuelan police. After the attack against the Cubana de Aviación aircraft, he escaped by simply walking out of a Venezuelan prison. He was later linked with operations for the support of, and provision of weapons to, the Nicaraguan resistance (the so-called "Contras") under the orders of Colonel Oliver North. It is said that he had lived in El Salvador since as long ago as 1980 and that he had also collaborated with the intelligence services of the Government of President Napoleón Duarte. He is also accused of having organized the campaign of terrorist actions against tourist facilities in Havana in 1977 through the Cuban-American Chávez Abarca.

41. The Special Rapporteur asked the Government of El Salvador for more information: on the background of Posada Carriles and his presence in El Salvador; on the owners of the three vehicles he had used in the country and how he had obtained them; on the activities in which he had been engaged in Salvadoran territory; on his business, social and political links or connections; and on any real estate or movable assets he may have owned. He also asked for information on the people, and their current juridical status, who had enabled Mr. Posada Carriles to obtain false identity documents, and on information that might be provided by analysis of that person's movements from one place to another. According to information handed to the Special Rapporteur, Posada Carriles appears to have entered or left Salvadoran territory over 50 times between 1990 and 2000.

42. The information which the Special Rapporteur gathered during his visit to El Salvador is restricted principally to the supposed commission of the offences of using a forged document, misrepresentation and using a forged identity document. In addition, and on the basis of the information obtained, the Special Rapporteur requested the Government of El Salvador to provide information on the activities carried out by Mr. Posada Carriles in the country and whether or not they were legal in the light both of domestic Salvadoran law and of international law.

43. The visit to the Republic of Panama took place from 8 to 10 May 2002. The Special Rapporteur was able to hold discussions with senior officials at the Ministry of Foreign Affairs, with magistrates of the Second Higher Court of Justice and with officials at the Attorney General's Office. At the headquarters of the National Police in Panama City, he had discussions with the prisoners Luis Posada Carriles and Pedro Crispín Remón Rodríguez. He later visited El Renacer prison where he was able to interview Mr. Gaspar Eugenio Jiménez Escobedo, alias Manuel Díaz, and Mr. Guillermo Novo Sampoll.

44. The Panamanian authorities informed the Special Rapporteur that Posada Carriles, alias Franco Rodríguez Mena, had entered the country from Costa Rica on 3 November 2000. The judicial proceedings against him and the other three prisoners were continuing. Proceedings had been initiated against them for the offences described in article 5 of Law 53 of 12 December 1995 (possession of explosives); chapter I, part VII of volume 2 of the Penal Code (offences against collective safety implying a common danger); chapter III, part VII of volume 2 of the Penal Code (unlawful association); and chapter I, part VIII of volume 2 of the Penal Code (offences against public credit). By decisions dated 6 December 2000 and 10 January 2001, issued by the First Circuit Prosecutor's Office of the First Judicial District of Panama, they were sentenced to preventive detention as a precautionary measure.

45. The Panamanian authorities also informed the Special Rapporteur that in the proceedings that were in progress in the Fourth Higher Public Prosecutor's Office of the First Judicial District of Panama there was no evidence that Posada Carriles had confessed to participating in the terrorist attacks committed in 1997 in Havana.

46. During the interview at the headquarters of the National Police in Panama City, Luis Posada Carriles told the Special Rapporteur that he had travelled to Panama with the intention of protesting peacefully against the presence of President Fidel Castro at the Tenth Ibero-American Summit and to offer logistic support for the assumed desertion of the head of the intelligence services of Cuba, General Delgado. He

also stated that everything had been a trick arranged by the Cuban intelligence services for the purpose of bringing him to Panama, and having him arrested and possibly extradited to Cuba. Neither he nor his companions had planned to assassinate President Fidel Castro. Part of the stratagem, according to him, had been the intention to connect them with plastic explosives — eight pounds of C-4 plastic explosive material and 50 packets containing 32 pounds of Semtex which were found buried in the Mañanitas sector in the outskirts of the city.

47. Posada Carriles stated that he did not know Otto René Rodríguez Llerena. Concerning the use of false identity documents and passports, he said that that was a necessity because using his true name would have meant putting his life in danger. His differences with the Head of State of Cuba had begun in the years when they were both students at Havana University. He had emigrated to the United States of America where he later worked for the CIA. After leaving the CIA he had travelled to Venezuela where he had worked with the police of that country. He had been under arrest for several months without charge in connection with the destruction of the aircraft belonging to Cubana de Aviación, but stated that, because of the total lack of evidence linking him with that attack, the prison guards left him at liberty to leave the prison. He categorically denied being a mercenary and defined himself as an anti-Castro combatant involved in the political and military struggle for the freedom of his country.

48. On being questioned concerning the interviews he gave in 1998 to *The New York Times* and to the *Telemoticias* network in Miami, Florida, implicating the Cuban American National Foundation in the financing of the campaign of attacks on hotels in Havana in 1997, he replied that he had denied such reports and that *The New York Times* had published a rectification to that effect, although in small type.

49. Pedro Ramón Rodríguez corroborated what Posada Carriles had said. He added that he had never believed in the supposed desertion of the head of Cuban intelligence but that he assumed that travelling to Panama was a calculated risk. It was not the first time that they had had to cover the desertion of a prominent Cuban. He did not accept being regarded as a mercenary and admitted being prepared to act against the Government of Cuba, although only through political and military action, without recourse to terrorism. He had never participated in placing an explosive device causing the death of innocent people. He added that, contrary to popular belief, the opponents of the Cuban Government lived a hard-working life in Miami and were in straitened financial circumstances.

50. Similar views were expressed by Guillermo Novo Sampoll and Gaspar Jiménez Escobedo who were interviewed by the Special Rapporteur in El Renacer prison. They both stated that they had travelled to Panama at the request of Posada Carriles to assist in the desertion of General Delgado. In response to questions from the Special Rapporteur, they said that at the time of their arrest they had not made up their minds how to take the General out of the country. One possibility would have been to cross the land frontier with Costa Rica and put him aboard a plane bound for the United States. Another would have been to take him out of Panama directly by plane. Both of them denied having taken part in terrorist acts although they admitted the possibility of having engaged in military action against the Government of Cuba. They also stated that they had no connection with the explosives found and that the detonators for them had not been found. Nor had any plan of the site or facilities of Panama University, where the attack was allegedly to have been perpetrated, been found in their possession.

51. Both Posada Carriles and Novo Sampoll seemed to be suffering from more or less serious health problems to which they specifically referred. The four prisoners were apparently being well treated in detention as far as physical conditions were concerned, but they did complain of the slowness of the judicial proceedings and expressed the hope that they would soon return to Miami.

52. The Special Rapporteur asked the Government of Panama for further information, and for a copy of the affidavit or police report concerning the arrest of these people in the Coral Suites Hotel to the east of the capital, a copy of the affidavit or police report relating to the confiscation of the explosives and a copy of the charge or announcement by the head of State of Cuba or his security services concerning the preparations for an attack against him. The Special Rapporteur wishes to know: whether other people entered the country on the dates mentioned in connection with the acts attributed to the four accused; what part, if any, was played by César Matamoros, the Honduran citizen Carlos Vicente López Sánchez and the driver engaged by Posada Carriles, the Panamanian citizen José

Manuel Hurtado Viveros; and how likely it is that a cell of persons of Cuban origin is present in Panama to provide support and cover to the prisoners.

53. It is necessary to establish whether the possibility that the supposed attacked against President Fidel Castro might have occurred in a place different from the auditorium of Panama University or the expressway to Tocumen Airport has been ruled out; who else was arrested in connection with this matter and what is their present legal situation; how and by whom was the equipment brought into the country and whether the detonators were found.

B. Analysis

54. Although the visits to El Salvador and Panama provided interesting data, comparing accounts, processing the information and analysing the evidence collected forced the Special Rapporteur to raise thematic issues and to ask the Salvadoran and Panamanian authorities to clarify matters where clarification was needed. Until such time as the replies are received he is not in a position to make a sound analysis and formulate definitive conclusions concerning reports of mercenary activities in the territory of the said countries. The data provided by the officials interviewed in each country leaves too many loose ends. The information is insufficient and the liberal treatment given to persons who seem to have been involved in unlawful acts calls for an explanation; for example, Posada Carriles enjoyed broad freedom of movement during the many years that he spent in El Salvador.

55. Of course, the statements by Luis Posada Carriles, Pedro Remón Rodríguez, Guillermo Novo Sampoll and Gaspar Jiménez Escobedo constitute partial testimony. The Special Rapporteur has transcribed them as objectively as possible in the account of his visit. He also notes that his testimony was not accompanied by any supporting evidence.

56. In accordance with his obligations, the Special Rapporteur is trying to verify the testimony received and to compare the documentation that he hopes to receive from the Panamanian authorities and, possibly, from other countries. Nevertheless, he wishes to point out, as a first element of analysis, that it seems unlikely that persons experienced in political and military struggle against a Government — which is how the persons making the statements identified themselves — would have entered a country to assist in the desertion and flight of a prominent visitor without having any plan in place. The individuals stated that they did not have a prepared plan for the kidnapping and flight nor did they have a network and a local support infrastructure. This confession of naivety, whereby experienced persons with a proven record of engaging in conspiracy acknowledge that they were in a hotel waiting passively to be notified in order to act, seems improbable and it does not provide a good alibi. Indeed, it causes one to suspect that information is being withheld and that other persons are being protected or, what is worse, that they had something else in mind when they went to Panama — coincidentally, at the time of the Tenth Ibero-American Summit.

57. Moreover, the speakers do not seem to perceive or to make any ethical distinction between a political and military struggle against a regime, which position they support, and the commission of crimes against political figures who are the focus of their anger. The vehemence of their gestures and expressions, and the record of their conspiratorial acts, which they do not deny but reinterpret as part of a commitment to liberate their country of origin, would seem to suggest that they know about the theory of the lesser evil or that of the end ("putting an end to the dictatorship") justifying the means. Everyone knows that, in practice, both theories lead to conduct in which the commission of a crime is of no concern since it is claimed that no crime has been committed because, supposedly, the cause is just.

VI. Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

58. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which the General Assembly adopted by resolution 44/34 of 4 December 1989, entered into force on 20 October 2001 when the twenty-second instrument of ratification or accession was deposited with the Secretary-General of the United Nations. There are now already 24 States that are party to the Convention. Costa Rica deposited its instrument of

accession on 20 September 2001, Mali on 12 April 2002 and Belgium on 31 May 2002.

59. Despite the objections to the definition contained in article 1, the Special Rapporteur believes that, now that it has entered into force, it will be easier to improve this important instrument and that this should be done by means of a protocol. This could be the starting point in efforts to address recent mercenary activities that have remained unpunished. The Convention will also facilitate preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case and will facilitate procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

60. As noted above, 24 States have completed the formal process of expressing their willingness to be bound by the International Convention. Those States are: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cyprus, Georgia, Italy, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia.

VII. Conclusions

61. General Assembly resolution 56/232 reaffirms its condemnation of mercenary activities, recognizes that these activities are used in all kinds of armed conflict, terrorism, illicit trafficking and covert operations and therefore urges Member States to take the necessary steps to prevent their territories from being used — and to keep out individuals involved — in criminal acts characterized by the presence of mercenaries. In that context the Assembly asks the Special Rapporteur to develop the topic and to take into account the new forms, manifestations and modalities that mercenary activities are taking on. In accordance with the mandate given him by the General Assembly, the Special Rapporteur has consulted States, intergovernmental and non-governmental organizations with a view to obtaining information and proposing preventive policies that will help eliminate mercenary activities throughout the world. He is also working on formulating a new definition of mercenaries. To that end he has requested opinions from States, organizations and experts and has assembled some of the elements of the work on the topic that was done at the recent second meeting of experts on mercenaries.

62. One of the most egregious attempts to exploit the riches of Africa involved UNITA in Angola. This rebel force was the biggest employer of mercenaries during its long struggle with the Government of Angola. In the territories under its control, it extracted and sold unlimited quantities of diamonds, despite the United Nations embargo, and used mercenaries to smuggle diamonds to European markets, primarily Antwerp.

63. The ceasefire agreement signed in Angola on 5 April 2002 is a very positive development for the entire continent. It continues the Lusaka peace process of 1994, provides for elections, the reintegration of 50,000 members of UNITA and the implementation of an emergency plan for internally displaced persons. Attention should also be drawn to the presidential and legislative elections held in Sierra Leone, another country that has had a long and bloody civil war and suffered from the presence of mercenaries.

64. The Special Rapporteur's visits to El Salvador and Panama have made it possible to conduct further investigations into reports that these countries have been used for mercenary activities and some of their nationals have been called on to organize activities characterized as offences. Even if the reports that persons of Cuban origin were involved in the commission of serious offences, such as homicide, are not confirmed, the admission that their intent was, rather, to assist in the desertion and flight of a prominent foreign visitor, also involves the commission of various offences that are punishable, both under the laws of Panama and under international law.

65. The investigations concerning these visits are not yet complete; the Special Rapporteur can say that the testimony received from the persons being held in Panamanian prisons is insufficient and is not consistent with the investigations carried out by the judicial authorities of that country and that more evidence will be needed before they can be accepted as valid.

VIII. Recommendations

66. It is recommended that the General Assembly should reaffirm its condemnation of mercenary activities, whatever their form of manifestation and that it should be alert to the new modalities these activities are taking on.

67. Since mercenaries are also used in acts of terrorism, it is further recommended that the mercenary aspect should be reflected in United Nations analysis, follow-up and resolutions on terrorism. The same concern should be reflected in national legislation. The Special Rapporteur will keep abreast of developments in combating terrorism and coordinate with the United Nations bodies dealing with terrorism.

68. It is also recommended that special attention should be paid to combating the involvement of mercenaries in illicit arms trafficking, which serves to fuel and prolong armed conflicts. With his experience the mercenary agent enhances the frequency and volume of illicit arms deals. That being the case, more effort must be put into developing legal instruments to facilitate prosecution of that crime and mobilizing the political will of States to suppress that illicit traffic effectively.

69. It is recommended that the Special Rapporteur should continue his investigations into the allegations concerning the existence of mercenary networks operating from various territories in North America, Central America and the Caribbean, in direct violation of national and international law, for the purpose of undermining the stability of constitutional Governments and, in particular, that of the Government of Cuba. None of these aims is consistent with the Charter of the United Nations. The General Assembly must therefore reaffirm the need not only to fully respect human rights, but also to safeguard the principles concerning the right of peoples to self-determination and non-intervention in the internal affairs of States.

70. Now that the International Convention of 1989 concerning mercenaries has come into force, it is recommended that the General Assembly should reiterate its invitation to all States that are not yet party thereto to ratify or accede to the Convention. It should, at the same time, invite Member States to review their national legislation so as to bring it into line with the Convention. Finally, the General Assembly should establish some mechanism to consider how better to implement the Convention.